

Remarks

Claims 43, 46-50 and 52-58 are pending. By this Response, claims 43, 46-50 and 52-58 have been amended, and claims 44 and 51 have been canceled without prejudice to or disclaimer of the subject matter recited therein. Reconsideration and allowance are respectfully requested.

Claim 55 has been rejected under 35 U.S.C. § 112, first paragraph, as containing subject matter not described in the specification in such a way as to enable one skilled in the art to make and/or use the claimed invention. Applicants traverse this rejection and respectfully assert that the rejected claim is enabled by the written description.

In particular, the Examiner has indicated that "the specification teaches that the email data is non-preferred data." OA, p. 2. Applicants point out, however, that the examples in the specification of e-mail information as non-preferred information are merely exemplary embodiments. See, for example, the explanation that "[i]n **one embodiment**, the network status message directs an end-user terminal to slow the rate at which it sends non-preferred information (**e.g.**, e-mail information)". Spec. par. [0016] (emphasis added). Moreover, the specification provides at least one specific example in which e-mail information is in fact preferred information:

For example, the signal 11010 enables an end-user terminal to send voice information, e-mail information and http requests to the network, and prohibits the end-user terminal from sending video information and ftp requests to the network.

Specification paragraph [0018]. For at least the above reasons, Applicants assert that the specification would enable one skilled in the art to make and/or use the claimed invention. Accordingly, Applicants request that the Examiner withdraw the instant rejection.

Claims 43, 44, 46 and 50-55 have been rejected under 35 U.S.C. 102(e) as being anticipated by USP 6,600,737 to Lai *et al.* Applicants traverse this rejection and respectfully assert that Lai fails to disclose all of the claimed limitations.

With specific regard to claims 43 and 50, Lai does not provide for a local **end-user** terminal as claimed. Rather, Lai describes a **server** 206 that receives a transfer data rate input

from a client 202. While the Examiner has taken the position that the server of Lai is an end-user terminal, Applicants point out that a person of ordinary skill would not reasonably consider the server 206 of Lai to be an end-user terminal as recited in the claims. Indeed, FIG. 1 of Lai clearly illustrates a “user interface 100” (Col. 2:42-44, emphasis added) and the written description of Lai expressly states that the “client computer 202” executes “code for creating and supporting the *user* interface” (Col. 3:29-34, emphasis added). On the other hand, nowhere in Lai is the server 206 referred to as an end-user terminal. Applicants also point out that the claims have been amended to clarify that the claimed command is received from a **network status manager** and that the information is sent to a **remote end-user terminal**. By contrast, the **client** 202 in Lai is both the source of the transfer data rate input and the recipient of the information from the server 206. Compare, for example, FIG. 2 of Lai, showing client 202, with FIG. 1 of the present application, showing a network status manager 102 that is separate and distinct from end users 103-106. For at least the above reasons, claims 43 and 50 are patentable over Lai. Claims 46 and 51-54 depend from claims 43 and 50, and therefore also recite patentable subject matter.

Claims 47-49 and 56-58 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Lai. Applicants traverse this rejection and respectfully assert that Lai fails to satisfy a *prima facie* case of obviousness because all of the claimed limitations are not taught or suggested by the references, or rendered obvious by market forces present at the time the claimed invention was made.

With specific regard to claims 47 and 56, Lai demonstrates no appreciation for the use of server 206 as a wireless telephone, or how such a solution might be implemented. Indeed, Lai is silent with respect to wireless technology altogether. To suggest, as the Examiner has suggested, that such a modification would have been obvious to a person of ordinary skill in the art in order to increase “system flexibility” is the impermissible use of hindsight, particularly absent any showing of a specific market trend toward wireless servers at the time the claimed invention was made. For at least the above reasons, claims 47 and 56 are patentable over Lai.

With specific regard to claims 48 and 57, Lai also demonstrates no appreciation for the use of server 206 as a handheld personal data manager, or how such a solution might be implemented. While the Examiner relies on increased “flexibility” as a reason for modifying Lai to provide for a handheld personal data manager as claimed, it is not even clear from Lai or the Examiner’s statements whether the suggested modification would have even been possible at

the time the claimed invention was made. For at least the above reasons, claims 48 and 57 are patentable over Lai.

With specific regard to claims 49 and 58, Lai demonstrates no appreciation for the use of server 206 as a computer terminal communicating using wireless technology. As already noted, Lai fails to disclose, teach or suggest any use of wireless technology. Given that the Examiner has failed to provide sufficient reasoning and support for the modification of Lai to obtain a wireless server at the time the claimed invention was made, claims 49 and 58 recite patentable subject matter. Accordingly, Applicants request that the Examiner withdraw the instant rejection.

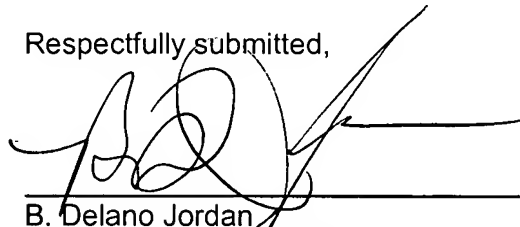
Conclusion

Applicants assert that all claims pending in the present application are in condition for allowance and request that the Examiner pass this case to issuance at the Examiner's earliest convenience.

The Examiner is invited to contact the undersigned at (202) 220-4200 to discuss any matter concerning this application.

Applicants do not believe that any additional fees are required in connection with this submission. Nonetheless, Applicants authorize payment of any additional fees under 37 CFR §§ 1.16 or 1.17 or credit any overpayment to Deposit Account No. 11-0600.

Respectfully submitted,



B. Delano Jordan
Registration No. 43,698

Dated: August 14, 2007

KENYON & KENYON LLP
1500 K Street, N.W. – Suite 700
Washington, D.C. 20005-1257
Tel: (202) 220-4200
Fax: (202) 220-4201
668465